

2 January 1976

Issues in Senate Select Committee
Draft Proposal for Intelligence Oversight

1. The draft is in legislative format, but at the same time amends the standing rules of the Senate. Furthermore, it asserts the Constitutional right of the Senate to change the amended Senate rules. This appears to be technically objectionable in that a statute cannot delegate to the Senate the authority to amend a Public Law.

2. The proposal states that service as a Senator on the committee shall not be taken into account in other Senate committee assignments. This is subject to the objection that if a Senator is to take on service in this committee in addition to all existing committee assignments, how much attention can he really give this important subject?

3. In discussing committee staffing there is no reference to requirements for secrecy agreements. This point is sufficiently important as to warrant providing for it in the charter of the committee, be it legislation or by resolution.

4. Sec. 11 provides that even after Presidential certification that information should not be disclosed, the Senate may disclose it. This raises serious Constitutional problems and would undoubtedly call for a veto of legislation containing such a provision.

5. Sec. 13 states that the committee shall be "fully and currently informed with respect to all intelligence activities." This is very broad wording and would raise questions as to the authority of agencies to withhold names of informants, agents, and to identify cooperating corporations and other extremely sensitive details. This again raises grave Constitutional questions.

6. Sec. 13(c) provides that the committee may specify types of intelligence activities which in its judgment are especially sensitive and may require that the committee be notified prior to the Executive branch decision to carry out any such activity. This clearly raises most serious Constitutional questions. The Senate is to legislate and the Executive is to execute that legislation. A committee is not to manage intelligence activities under the Constitution.

7. There is a provision that the Comptroller General shall have access to any books, accounts, records, and all of the papers or things within the possession of the intelligence agency. This again is unacceptable on Constitutional grounds. Since the time of George Washington there has been recognition that all intelligence accounts may not be reviewed by the Congress or its representatives.

8. The jurisdiction of the committee is not made exclusive. It is recognized that attempts to provide for exclusive jurisdiction will be difficult.

9. No provision is made for repeal of Foreign Assistance Act section 662 reports.

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